APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,614	05/31/2001	Yuko Tamaki	35.G2820	7059

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EXAMINER
ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

	Application No.	Applicant(s)
Office Action Summary	09/867,614	TAMAKI ET AL.
	Examiner	**Art Unit**	
	Michael Astorino	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>31 May 2001</u> .

2a)☐ This action is **FINAL.** 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-100</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-61,63,67-73,75,79-85,87 and 91-100</u> is/are rejected.

7)☒ Claim(s) <u>62, 64-66, 74, 76-78, 86 and 88-90</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Objections

1.   Regarding claim 48, the examiner suggests amending "said outside" to "outside

transmitting means".

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 96-100 are rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. The "computer-executable program" as claimed in claims 96-

100 is non-statutory subject matter because computer programs are non-physical "things" nor a

statutory processes, as they are not "acts" of being performed. Moreover, since the applicant has

appropriately claimed a type of "computer executable program" by stating in the preamble of

claims 13, 37, 53, 80, and 95, (respectively to 96-100), a "program code", amending claims 96-

100 maybe redundant.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1-61, 63, 67-73, 75, 79-85, 87 and 91-95 are rejected under 35 U.S.C. 102(e) as

being anticipated by Schulze et al US Patent Number 6,443,890.

5.   In regards to claims 1, 2, 7, 8, 13, 14, 19, 20, 21, Schulze et al disclose a body

temperature managing method/apparatus/a storage medium, comprising:

        a receiving step for receiving body temperature data (36);

        an accumulating step for accumulating body temperature data received in said receiving

step until predetermined operations are performed (column 5, lines 1-25; and column 6, lines 10-

15); and

        a transmitting step for enciphering and transmitting said body temperature data

accumulated in said accumulating step (column 4, lines 55-63).

6.   In regards to claims 3, 6, 9, 12, 15, and 18, Schulze et al disclose, wherein body

temperature data wirelessly transmitted from a thermometer is received (column 2, lines 15-61)

7.   In regards to claims 4, 10, and 16, Schulze et al disclose a body temperature managing

method according to claim 1, wherein said receiving step further comprises a display step for

displaying received body temperature data (84 alarm light; and also column 4, lines 34-43).

8.   In regards to claims 5, 11, and 17, Schulze et al disclose wherein said transmitting step

further comprises a notifying step for notifying that the transmitting step has concluded. The

transmission step is completed using a cellular network, when the connection is terminated the

user is notified.

9.   In regards to claim 22, Schulze et al disclose a body temperature managing system

comprising a thermometer (36) and a body temperature terminal (12); said thermometer

comprising measuring means for measuring body temperature (42), and transmitting means for

transmitting body temperature data measured by said measuring means (inherent); and said body

temperature terminal comprising receiving means (42) for receiving body temperature data

transmitted by said transmitting means, accumulating means (42) for accumulating body

temperature data transmitted from said transmitting means, until predetermined operations are

performed (46), and outside transmitting means (56) for outside transmitting of body temperature

data accumulated by said accumulating means.

10.   In regards to claims 23, 24, 30, 31, 37, and 38, Schulze et al disclose a body temperature

managing method, comprising: a body temperature data storing step for storing body temperature

data (42); a body temperature data disclosing step for disclosing to a hospital said body

temperature data stored in said storing step (56; Column 6, lines 49-68 and column 7, lines 1-29),

in the event that instructions for receiving advice from a professional are received; a diagnosis

data receiving step wherein diagnosis data, diagnosed by a professional based on said body

temperature disclosed in said body temperature data disclosing step, is received; and a diagnosis

data transmitting step for transmitting diagnosis data received in said diagnosis data receiving

step. It is inherent that communication from the health care provider to the patient by voice or

Internet is transmission of diagnostic data.

11.   In regards to claims 25, 32, and 39, Schulze et al disclose wherein body temperature data

obtained in said body temperature data obtaining step is enciphered body temperature data

(column 4, lines 55-63).

12.   In regards to claims 26, 33, and 40, Schulze et al disclose wherein said disclosing step

further comprises a deciphering step for deciphering said enciphered body temperature data

(inherent, column 4, lines 55-63).

13.   In regards to claims 27, 28, 29, 34, 35, 36, 41, 42, and 43, Schulze et al disclose wherein

the destination of transmission of said transmitted diagnosis data in said diagnosis data

transmitting step is one of at least a personal computer, cellular phone, or a portable terminal

(column 6, lines 49-68).

14.   In regards to claim 44, Schulze et al disclose a body temperature managing system

comprising: a server (30); and hospital terminals (figure 1, "medical care provider" 28);

connected to said server by a network (26); said server comprising body temperature data storing

means for storing body temperature data, judgment receiving means (received alarm information;

columns 5 and 6) for receiving judgment regarding whether or not to receive professional advice,

body temperature data disclosing means for disclosing said body temperature data stored in said

storing means to a hospital in the event that said judgment receiving means receives judgment to

receive professional advice (column 6, lines 49-68), diagnosis data receiving means for receiving

diagnosis data of a diagnosis made by a professional based on the body temperature data

disclosed by said body temperature data disclosing means (column 7, lines 1-29), and diagnosis

data transmitting means for transmitting diagnosis data received by said diagnosis data receiving

means; and said hospital terminal comprising viewing means for viewing body temperature data

disclosed by said body temperature data disclosing means, and diagnosis data transmitting means

for transmitting to said server diagnosis data of a diagnosis made by a professional based on the

body temperature data, viewed by said viewing means.

15.   In regards to claim 45, Schulze et al disclose wherein said viewing means comprises

body temperature data transmitting means wherein said body temperature data is transmitted

from said server to said hospital terminal (column 6, lines 49-67 and column 7, lines 1-29; see

also figure 1).

16.   In regards to claim 46, Schulze et al disclose wherein said viewing means comprises in-

server viewing means for viewing said body temperature data stored within said server (column

6, lines 49-67 and column 7, lines 1-29; see also figure 1), by the hospital inputting a deciphering

key (inherent).

17.   In regards to claims 47, 48 and 92, Schulze et al disclose a body temperature managing

system comprising: a server (30); and thermometer terminals (12) connected to said server (30)

by a network (26); said thermometer terminal comprising first receiving means (42) for receiving

body temperature data measured by a thermometer, storing means (42) for storing body

temperature data received by said first receiving means, and transmitting means (56) for

transmitting body temperature data stored by said storing means; and said server (30) comprising

second receiving means (inherent) for receiving body temperature data transmitted by said

transmitting means, disclosing means (28) for disclosing to a hospital said body temperature data

received by said second receiving means, diagnosis data receiving means (28) for receiving

diagnosis data of a diagnosis made by a professional (medical care provider) based on the body

temperature data disclosed by said disclosing means, and outside transmitting means (12) for

outside transmitting of diagnosis data received by said diagnosis data receiving means (column

6, lines 49-67 and column 7, lines 1-29; see also figure 1).

18.   In regards to claims 49, 50, 51, 52, 53, 54, Schulze et al disclose a body temperature

managing method, device and storage medium, comprising: a storing step for storing enciphered

body temperature data (column 4, lines 55-62); a duplicate creating step for creating a duplicate

of said body temperature data; a data deciphering step for deciphering said body temperature

data created in said duplicate creating step (inherent); an analyzing step for analyzing body

temperature data deciphered in said data deciphering step (column 6, lines 49-67); and a deleting

step for deleting said deciphered body temperature data following completion of said analyzing

step (inherent).

19.   In regards to claim 55, Schulze et al disclose a body temperature managing system (see

figure 1 and columns 4-7) wherein a server (30), thermometer terminal (12) for transmitting

body temperature data, and a thermometer (36) are connected via a network (26); said

thermometer (36) comprising measuring means for measuring body temperature, and

transmitting means for transmitting body temperature data measured by said measuring means;

said body temperature terminal (12) comprising body temperature data receiving means for

receiving body temperature data transmitted by said body temperature data transmitting means,

storing means for storing body temperature data received with said body temperature data

receiving means, enciphering means (column 4, lines 59-62) for enciphering body temperature

data stored in said storing means, and enciphered data transmitting means for transmitting

enciphered data enciphered by said enciphering means; and said server (30) comprising

enciphered data receiving means (inherent) for receiving enciphered data transmitted by said

enciphered data transmitting means; storing means for storing enciphered data received by said

enciphered data receiving means, duplicate creating means for creating a duplicate of said

enciphered data stored by said storing means, deciphering means (inherent) for deciphering said

enciphered data created by said duplicate creating means, analyzing means (inherent) for

analyzing deciphered data deciphered by said data deciphering means, and deleting means for deleting said deciphered data following said analyzing means finishing (inherent).

20.   In regards to claims 56, 57, 68, 69, 80 and 81, Schulze et al disclose a body temperature managing method, device and storage medium, comprising: a body temperature data obtaining step for obtaining body temperature data (36); a body temperature data storing step for storing said body temperature data obtained in said obtaining step (42); a body temperature data analyzing step for analyzing body temperature data based on said body temperature data stored in said storing step (84); and an analyzed data transmitting step for outside transmitting of analyzed data analyzed in said analyzing step (56).

21.   In regards to claims 58, 70, and 82 Schulze et al disclose wherein data obtained in said body temperature data obtaining step is enciphered data (column 4, lines 55-63).

22.   In regards to claims 59, 60, 63, 71, 72, 75, 83, 84, and 87, Schulze et al disclose further comprising a judging step for judging whether or not a predetermined time has come (84), wherein in the event that judgment is made in said judging step that said predetermined time has come, said body temperature data is analyzed in said body temperature data analyzing step based on said body temperature data (column 6, lines 49-67).

23.   In regards to claims 61, 73, and 85, Schulze et al disclose wherein said body temperature data analyzing step further comprises a deciphering step for deciphering said body temperature data (inherent, column 4, lines 55-63).

24.   In regards to claims 67, 79, and 91, Schulze et al disclose wherein the destination of transmission of said analyzed data transmitted in said diagnosis data transmitting step is one of at least a personal computer, cellular phone, or a portable terminal (column 6, lines 49-68).

25.   In regards to claims 93, 94, and 95, Schulze et al disclose a body temperature managing

method, device and storage medium, having beforehand sample data for making comparative

reference with body temperature data, said method comprising: a body temperature data

obtaining step for obtaining body temperature data (36); a body temperature data storing step for

storing said body temperature data obtained in said obtaining step (42); an analyzing step for

analyzing said body temperature data stored in said storing step (84); a diagnosing step for

diagnosing by making comparative reference of analyzed results analyzed in said analyzing step

with said sample data (column 4, lines 55-59); and a transmitting step for transmitting the

diagnosis results diagnosed in said diagnosing step (56).

Allowable Subject Matter

26.   Claims 62, 64, 65, 66, 74, 76, 77, 78, 86, 88, 89, and 90 would be allowable if rewritten

to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office

action and to include all of the limitations of the base claim and any intervening claims.

In regards to claims 62, 64, 65, 66, 74, 76, 77, 78, 86, 88, 89, and 90, the further limitations of

said claims are related to electronic commerce and not to medical diagnosing.

Conclusion

27.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure. Schulze et al US Patent Number 5,673,692, which is incorporated by reference into

Schulze et al. US Patent Number 6,443,890 B1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Michael Astorino
September 30, 2003